

ESTTA Tracking number: **ESTTA299835**

Filing date: **08/10/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91190878
Party	Defendant Undisputed International LLC
Correspondence Address	UNDISPUTED INTERNATIONAL LLC UNDISPUTED INTERNATIONAL LLC # 711 4200 Cathedral Ave. NW Washington, DC 20016  amirpeay@gmail.com
Submission	Motion to Strike
Filer's Name	Andrew N. Spivak
Filer's e-mail	aspivak@mosaiclegalgroup.com
Signature	/Andrew N. Spivak/
Date	08/10/2009
Attachments	JONH L. SULLIVAN - Motion to Strike.pdf ( 5 pages )(55580 bytes ) SARA LEE - Reg. 1.pdf ( 2 pages )(80204 bytes ) Sara Lee - Reg. 2.pdf ( 2 pages )(59841 bytes ) SARA LEE - Reg. 3.pdf ( 2 pages )(56556 bytes ) SARA LEE - Reg. 4.pdf ( 2 pages )(58353 bytes ) SARA LEE - Reg. 5.pdf ( 2 pages )(59576 bytes ) JENNY CRAIG - Reg. 1.pdf ( 2 pages )(68249 bytes ) JENNY CRAIG - Reg. 2.pdf ( 2 pages )(65965 bytes ) ELIZABETH ARDEN - Reg. 1.pdf ( 2 pages )(62801 bytes ) ELIZABETH ARDEN - Reg. 2.pdf ( 2 pages )(63153 bytes ) ELIZABETH ARDEN - Reg. 3.pdf ( 2 pages )(62170 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Center Cut Hospitality, Inc.	)	Opposition No. 91/190,878
	)	
Opposer,	)	Mark: JOHN L. SULLIVAN
	)	App. No.: 77/570,821
v.	)	
	)	
	)	
Undisputed International LLC	)	
	)	
Applicant.	)	
	)	

**MOTION TO STRIKE**

Pursuant to TBMP §506, Applicant Undisputed International LLC (“Applicant”), by and through its undersigned counsel, hereby submits this Motion to Strike all of Paragraph 6 and a portion of Paragraph 4 of Opposer Center Cut Hospitality, Inc.’s (“Opposer”) Notice of Opposition. Applicant moves to strike these paragraphs because they contain insufficient claims. This motion is valid and should be granted because the insufficiency of the cited claims is clearly apparent, and the claims do not raise factual issues that need to be determined on the merits. *See* §TBMP 506.01. Specifically, Paragraph 6 of the Notice of Opposition states that “Applicant’s mark is primarily merely a surname.” Paragraph 4 states that “Opposers have extensively, continuously and without interruption used the Opposer’s **Marks** beginning at least as early as May 10, 1996 in promoting their goods and services.” **Emphasis added.**

**I. Paragraph 6**

In Paragraph 6 of its Notice of Opposition, Opposer asserts that Applicant’s mark JOHN L. SULLIVAN is primarily merely a surname. However, a review of Applicant’s mark JOHN L. SULLIVAN on its face clearly shows that such is not the case. Rather, Applicant’s mark is

comprised of three different terms, including the male first name JOHN, the initialized letter L, and the word SULLIVAN. According to TMEP §1211.01(b)(vi), if wording that is combined with a surname is capable of functioning as a mark on its own, the mark as a whole is not considered to be primarily merely a surname. Applied here, this particular rule requires that, in order for JOHN L. SULLIVAN to be considered a valid mark and not primarily merely a surname, the JOHN L. portion standing alone must be capable of functioning as a trademark without the addition of SULLIVAN. Since no substantive rule exists as to why JOHN L. alone is incapable of acting as a trademark, the mark JOHN L. SULLIVAN as a whole is not primarily merely a surname. In fact, to argue otherwise would make all of Opposer's Marks subject to the same surname issue.

Existing registrations on the Principal Register are further proof that a full name is registrable and not subject to a refusal for being primarily merely a surname. Examples include SARA LEE (U.S. Registration Nos. 1,785,697; 2,568,180; 2,772,009; 2,897,493 and 2899982), JENNY CRAIG (U.S. Registration Nos. 1,967,798 and 2,760,695), and ELIZABETH ARDON (U.S. Registration Nos. 1,656,519; 3,651,009 and 3069443), among others. *See* printouts from the U.S. Trademark Office Database at Exhibit A. As these full names are capable of existence on the Principal Register with no showing of acquired distinctiveness, so to is JOHN L. SULLIVAN.

Based on the existing rules, Paragraph 6 of Opposer's Notice of Opposition consists entirely of insufficient claims that raise no factual issues. Further, the laws that have been applied in Paragraph 6 have simply been applied incorrectly. For these reasons, the claims therein should be stricken from the record.

## **II. Paragraph 4**

In Paragraph 3 of its Notice of Opposition, Opposer defines “Opposer’s Marks” as being comprised of six federal registrations that it alleges to own. *See* “Marks Cited By Opposer As Basis For Opposition” on pages 1-2 of the Notice of Opposition. In the following Paragraph 4, Opposer then states that it has used “Opposer’s Marks” since at least as early as May 10, 1996. However, a review of the “Marks Cited By Opposer As Basis For Opposition” reveals that three of the six marks were not allegedly used at least as early as May 10, 1996. Rather, U.S. Registration No. 2,256,909 for the mark RINGSIDE AT SULLIVAN’s (with Design) was allegedly first used in commerce on October 30, 1997; U.S. Registration No. 2,249,440 for the mark RINGSIDE AT SULLIVAN’S was allegedly first used in commerce on October 30, 1997; and U.S. Registration No. 2,853,848 for the mark SWINGIN’ AT SULLIVAN’S was allegedly first used in commerce on January 15, 2003.

Since these registrations, on their face, were not allegedly used at least as early as May 10, 1996, a portion of Opposer’s claims in Paragraph 4 should be stricken as being insufficient, incorrect and contradictory to Opposer’s own statements and allegations.

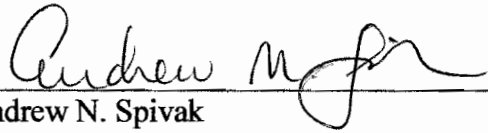
For the reasons outlined above, Applicant respectfully requests that the Trademark Trial and Appeal Board strike Paragraph 6 of Opposer’s Notice of Opposition in its entirety, and that it also strike a portion of Paragraph 4.

[signature line on the next page]

Respectfully submitted,

Dated: August 10, 2009

By:

A handwritten signature in black ink, appearing to read "Andrew N. Spivak", written over a horizontal line.

Andrew N. Spivak  
Attorney for Applicant

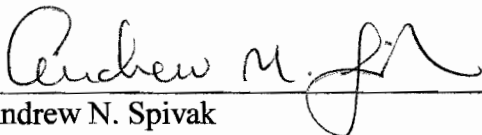
Mosaic Legal Group, PLLC  
2001 Twelfth Street, NW  
Suite 117  
Washington, D.C. 20009  
Telephone: (240) 723-5470  
Facsimile: (202) 478-0379  
E-Mail: [ASpivak@MosaicLegalGroup.com](mailto:ASpivak@MosaicLegalGroup.com)

## CERTIFICATE OF SERVICE

I, Andrew N. Spivak, one of the Attorneys for Applicant, hereby certify that on this 20<sup>th</sup> day of August, 2009, a true a correct copy of the foregoing ANSWER TO NOTICE OF OPPOSITION was served via first class mail, postage prepaid upon:

Phillip L. Free, Jr.  
David M. Sullivan  
Drew T. Palmer  
CROWE & DUNLEVY, P.C.  
20 N. Broadway, Suite 1800  
Oklahoma City, OK 73102

Attorneys for Opposer

  
\_\_\_\_\_  
Andrew N. Spivak  
For the firm

MOSAIC LEGAL GROUP, PLLC  
2001 Twelfth Street, NW  
Suite 117  
Washington, D.C. 20009

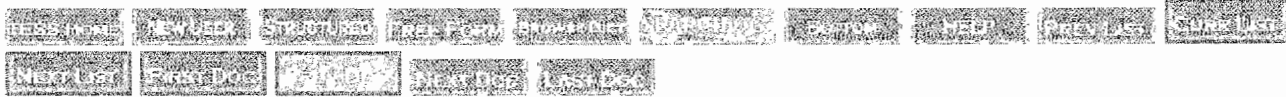


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# Sara Lee

<b>Word Mark</b>	SARA LEE
<b>Goods and Services</b>	IC 029. US 046. G & S: processed meats. FIRST USE: 19910312. FIRST USE IN COMMERCE: 19910312
<b>Mark Drawing Code</b>	(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
<b>Serial Number</b>	74260390
<b>Filing Date</b>	March 30, 1992
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	May 11, 1993
<b>Registration Number</b>	1785697
<b>Registration Date</b>	August 3, 1993
<b>Owner</b>	(REGISTRANT) Saramar Corporation CORPORATION DELAWARE Cannon Building, Suite 145 861 Silver Lake Boulevard Dover DELAWARE 19901
	(LAST LISTED OWNER) SARA LEE CORPORATION LIMITED PARTNERSHIP 3500 Lacey Road Downers Grove ILLINOIS 60515
<b>Assignment Recorded</b>	ASSIGNMENT RECORDED
<b>Attorney of Record</b>	Mary Margaret Murray

**Prior Registrations** 0905216;1026301;AND OTHERS  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Affidavit Text** SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20031124.  
**Renewal** 1ST RENEWAL 20031124  
**Other Data** The name "SARA LEE" is not the name of a particular living individual.  
**Live/Dead Indicator** LIVE

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## Typed Drawing

Word Mark	SARA LEE
Goods and Services	IC 030. US 046. G & S: cheese. FIRST USE: 20000322. FIRST USE IN COMMERCE: 20000322
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	75938769
Filing Date	March 7, 2000
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	December 19, 2000
Registration Number	2568180
Registration Date	May 7, 2002
Owner	(REGISTRANT) Saramar, L.L.C. LTD LIAB CO DELAWARE 125 South Wacker Drive Suite 300 Chicago ILLINOIS 60606  (LAST LISTED OWNER) SARA LEE CORPORATION CORPORATION MARYLAND 3500 Lacey Road Downers Grove ILLINOIS 60515
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Mary Margaret Murray
Prior Registrations	0905216;1026301;1785697;2044398
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR).
Other Data	"SARA LEE" does not identify a living individual.

**Live/Dead Indicator LIVE**

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**Browser to return to TESS)****Typed Drawing**

**Word Mark** SARA LEE  
**Goods and Services** IC 030. US 046. G & S: crackers, flavored mustards, sauces and mayonnaise. FIRST USE: 20010228. FIRST USE IN COMMERCE: 20010228  
**Mark Drawing Code** (1) TYPED DRAWING  
**Serial Number** 75938770  
**Filing Date** March 7, 2000  
**Current Filing Basis** 1A  
**Original Filing Basis** 1B  
**Published for Opposition** December 12, 2000  
**Registration Number** 2772009  
**Registration Date** October 7, 2003  
**Owner** (REGISTRANT) Saramar, L.L.C. LTD LIAB CO DELAWARE 125 South Wacker Drive, Suite 300 Chicago ILLINOIS 60606  
  
(LAST LISTED OWNER) SARA LEE CORPORATION LIMITED PARTNERSHIP 3500 Lacey Road Downers Grove ILLINOIS 60515  
**Assignment Recorded** ASSIGNMENT RECORDED  
**Attorney of Record** Mary Margaret Murray  
**Prior Registrations** 0905216;1026301;1785697;2044398;AND OTHERS  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Other Data** "SARA LEE" does not identify a living individual.  
**Live/Dead Indicator** LIVE

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TARR Status	ASSIGN Status	TDR	TTAB Status
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 ( Use the "Back" button of the Internet Browser to return to TESS)**SARA LEE****Word Mark****SARA LEE****Goods and Services**

IC 029. US 046. G &amp; S: processed meats, namely pork, poultry and beef. FIRST USE: 19940531. FIRST USE IN COMMERCE: 19940531

**Standard Characters Claimed****Mark Drawing Code**

(4) STANDARD CHARACTER MARK

**Serial Number**

78327886

**Filing Date**

November 14, 2003

**Current Filing Basis**

1A

**Original Filing Basis**

1A

**Published for Opposition**

August 3, 2004

**Registration Number**

2897493

**Registration Date**

October 26, 2004

**Owner**

(REGISTRANT) Sara Lee Corporation CORPORATION MARYLAND 3500 Lacey Road Downers Grove ILLINOIS 60515

**Attorney of Record**

Mary Margaret Murray

**Prior Registrations**

1026301;2568180;2772009

**Type of Mark**

TRADEMARK

**Register**

PRINCIPAL

**Other Data**

The name(s), portrait(s), and/or signature(s) shown in the mark does not identify a particular living individual.

**Live/Dead Indicator**    **LIVE**[TESS HOME](#)[NEW USER](#)[STRUCTURED](#)[FREE FORM](#)[BROWSE DICT](#)[SEARCH OG](#)[TOP](#)[HELP](#)[PREV LIST](#)[CURR LIST](#)[NEXT LIST](#)[FIRST DOC](#)[PREV DOC](#)[NEXT DOC](#)[LAST DOC](#)[|.HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)



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TARR Status	ASSIGN Status	TDR	TTAB Status
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 ( Use the "Back" button of the Internet Browser to return to TESS)**SARA LEE**

<b>Word Mark</b>	<b>SARA LEE</b>
<b>Goods and Services</b>	IC 035. US 100 101 102. G & S: retail kiosk and deli center services featuring processed meats. FIRST USE: 19940531. FIRST USE IN COMMERCE: 19940531
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	78327887
<b>Filing Date</b>	November 14, 2003
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	August 10, 2004
<b>Registration Number</b>	2899982
<b>Registration Date</b>	November 2, 2004
<b>Owner</b>	(REGISTRANT) Sara Lee Corporation CORPORATION MARYLAND 3500 Lacey Road Downers Grove ILLINOIS 60515
<b>Attorney of Record</b>	Mary Margaret Murray
<b>Prior Registrations</b>	1026301;2568180;2772009
<b>Type of Mark</b>	SERVICE MARK
<b>Register</b>	PRINCIPAL
<b>Other Data</b>	The name(s), portrait(s), and/or signature(s) shown in the mark does not identify a particular living individual.

Live/Dead Indicator   LIVE

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## Word Mark

JENNY CRAIG

## Goods and Services

IC 009. US 021 023 026 036 038. G &amp; S: pre-recorded audio tapes and video tapes about weight control, nutrition, menu planning and the like. FIRST USE: 19930901. FIRST USE IN COMMERCE: 19930901

IC 016. US 002 005 022 023 029 037 038 050. G &amp; S: workbooks and printed guides about weight control, nutrition, menu planning and the like. FIRST USE: 19930901. FIRST USE IN COMMERCE: 19930901

IC 030. US 046. G &amp; S: prepared reduced calorie foods, namely processed cereals, muffins, pancakes mix, noodles and pasta, pizzas, waffles and French toast and rice based snack bars. FIRST USE: 19930901. FIRST USE IN COMMERCE: 19930901

## Mark Drawing Code

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

## Serial Number

74562117

## Filing Date

August 17, 1994

## Current Filing Basis

1A

## Original Filing Basis

1A

## Published for Opposition

January 23, 1996

## Registration

1967798

**Number****Registration Date** April 16, 1996**Owner** (REGISTRANT) JENNY CRAIG, INC. CORPORATION DELAWARE 5770 FLEET STREET  
CARLSBAD CALIFORNIA 92008(LAST LISTED OWNER) SOCIETE DES PRODUITS NESTLE, S.A. CORPORATION  
SWITZERLAND CASE POSTALE 353 1800 VEVEY SWITZERLAND**Assignment  
Recorded**

ASSIGNMENT RECORDED

**Attorney of  
Record**

JORGE ARCINIEGA

**Prior  
Registrations**

1743377;1774337

**Type of Mark**

TRADEMARK

**Register**

PRINCIPAL

**Affidavit Text**

SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20060621.

**Renewal**

1ST RENEWAL 20060621

**Other Data**

"JENNY CRAIG" is the name of a living individual whose consent is of record.

**Live/Dead  
Indicator**

LIVE

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## Typed Drawing

**Word Mark** JENNY CRAIG

**Goods and Services** IC 005. US 006 018 044 046 051 052. G & S: Ready to eat nutritional food bar for use as a meal replacement. FIRST USE: 19850218. FIRST USE IN COMMERCE: 19850218

IC 029. US 046. G & S: Prepared soups; prepared meals consisting primarily of poultry, fish, seafood, beef, pork and, /or vegetables; prepared[ sides dished] \* side dishes\* consisting primarily of poultry, fish, seafood, beef, pork and;/or vegetables. FIRST USE: 19850218. FIRST USE IN COMMERCE: 19850218

IC 030. US 046. G & S: Prepared foods, namely, the following; preparations made from cereals, namely, cereal-based snack food, processed cereals, muffins, pancake mix, noodles, pasta, pizza, waffles, french toast, granola, processed cereals, namely cereal fiber powders and cereal powders; popped popcorn, table syrups, prepared meals consisting primarily of pasta or rice; prepared side dishes consisting primarily of pasta or rice, bread, salad dressings, pasta, ice cream, biscuits, cookies and candy. FIRST USE: 19850218. FIRST USE IN COMMERCE: 19850218

IC 042. US 100 101. G & S: Weight reduction, diet planning and supervision; nutrition counseling. FIRST USE: 19850218. FIRST USE IN COMMERCE: 19850218

**Mark Drawing Code** (1) TYPED DRAWING

**Serial Number** 76194252

**Filing Date** January 12, 2001

**Current Filing Basis** 1A

**Original Filing Basis** 1A

**Published for Opposition** June 17, 2003

**Change In** CHANGE IN REGISTRATION HAS OCCURRED

**Registration****Registration  
Number**

2760695

**Registration  
Date**

September 9, 2003

**Owner**(REGISTRANT) Jenny Craig, Inc. CORPORATION DELAWARE 5770 Fleet Street Carlsbad  
CALIFORNIA 92008(LAST LISTED OWNER) SOCIETE DES PRODUITS NESTLE, S.A. CORPORATION  
SWITZERLAND CASE POSTALE 353 1800 VEVEY SWITZERLAND**Assignment  
Recorded**

ASSIGNMENT RECORDED

**Attorney of  
Record**

JORGE ARCINIEGA

**Prior  
Registrations**

1774337;1967798;1967799

**Type of Mark**

TRADEMARK. SERVICE MARK

**Register**

PRINCIPAL

**Other Data**

The name shown in the mark identifies a particular living individual.

**Live/Dead  
Indicator**

LIVE

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### Typed Drawing

#### Word Mark

ELIZABETH ARDEN

#### Goods and Services

IC 014. US 027 028. G & S: jewelry. FIRST USE: 19900319. FIRST USE IN COMMERCE: 19900319

IC 018. US 003 041. G & S: luggage and umbrellas. FIRST USE: 19900316. FIRST USE IN COMMERCE: 19900316

#### Mark Drawing Code

(1) TYPED DRAWING

#### Serial Number

74017600

#### Filing Date

January 9, 1990

#### Current Filing Basis

1A

#### Original Filing Basis

1B

#### Published for Opposition

July 31, 1990

#### Registration Number

1656519

#### Registration Date

September 10, 1991

#### Owner

(REGISTRANT) UNOPCO SUB, INC. CORPORATION DELAWARE 390 Park Avenue New York NEW YORK 10022

(LAST LISTED OWNER) FD MANAGEMENT, INC. CORPORATION BY ASSIGNMENT DELAWARE 300 DELAWARE AVENUE WILMINGTON DELAWARE 19801

#### Assignment Recorded

ASSIGNMENT RECORDED

#### Attorney of Record

PETER J. LYNFIELD

**Prior Registrations** 0153598;0534323;0534327;0536589;0545592;0545890;0557022;1073947;1265997;  
1577216;1579710;AND OTHERS  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Affidavit Text** SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20011124.  
**Renewal** 1ST RENEWAL 20011124  
**Other Data** THE NAME "ELIZABETH ARDEN" DOES NOT IDENTIFY A PARTICULAR LIVING INDIVIDUAL.  
**Live/Dead Indicator** LIVE

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# ELIZABETH ARDEN

**Word Mark****ELIZABETH ARDEN****Goods and Services**IC 020. US 002 013 022 025 032 050. G & S: Decorative Pillows. FIRST USE: 20080331.  
FIRST USE IN COMMERCE: 20080331IC 024. US 042 050. G & S: Bed linen, Bed sheets, Bed skirts, Bed covers, Bed throws, Bed spreads, Bed comforters, Pillow Shams, Pillow Cases, Pillow Covers. FIRST USE: 20080331.  
FIRST USE IN COMMERCE: 20080331**Standard Characters Claimed****Mark Drawing Code**

(4) STANDARD CHARACTER MARK

**Serial Number**

77641564

**Filing Date**

December 30, 2008

**Current Filing Basis**

1A

**Original Filing Basis**

1A

**Published for Opposition**

April 21, 2009

**Registration Number**

3651009

**Registration Date**

July 7, 2009

**Owner** (REGISTRANT) FD Management, Inc. CORPORATION DELAWARE 200 First Stamford Place  
Stamford CONNECTICUT 06902

**Attorney of Record** James Thomas Perry

**Prior Registrations** 1073947;1579710;1656519

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Other Data** The name(s), portrait(s), and/or signature(s) shown in the mark does not identify a particular living individual.

**Live/Dead Indicator** LIVE

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## ELIZABETH ARDEN

**Word Mark** ELIZABETH ARDEN**Goods and Services** IC 003. US 001 004 006 050 051 052. G & S: Nail care products namely, cuticle conditioners, cuticle creams, cuticle removing preparations; nail polishes, nail lacquers, nail topcoats, nail hardeners, nail base coats, nail strengtheners, nail polish removers, nail glues, nail enamels, nail treatments, artificial and acrylic nails, nail tips, nail buffering preparations, nail shapers, nail smoothers and emery boards. FIRST USE: 20050606. FIRST USE IN COMMERCE: 20050606**Standard Characters Claimed****Mark Drawing Code** (4) STANDARD CHARACTER MARK**Serial Number** 78976610**Filing Date** March 5, 2004**Current Filing Basis** 1A**Original Filing Basis** 1B**Published for Opposition** March 8, 2005**Registration Number** 3069443**Registration** March 14, 2006

**Date**

**Owner** (REGISTRANT) FD Management, Inc. CORPORATION DELAWARE 300 Delaware Avenue  
Wilmington DELAWARE 19801

**Attorney of  
Record** James Thomas Perry

**Prior  
Registrations** 0153598;0545592;0545890;0557022;1073947;1577216;1579710;1649230;1656519;  
2049505;2162507;2278502;AND OTHERS

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Other Data** The name(s), portrait(s), and/or signature(s) shown in the mark does not identify a particular living individual.

**Live/Dead  
Indicator** LIVE

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